

Question 4
February 2002 Bar Examination
(Replaces MEE Question 4- Use MEE #4 Answer Booklet)

Cyco, Inc. has 100 shares of common stock, authorized, issued and outstanding. Each share is entitled to one vote. The corporate records show the shares are owned equally by five shareholders, Andrew, Barbara, Carol, David and Earl, who are brothers and sisters.

The Articles of Incorporation for Cyco, Inc. provide that no shareholder can pledge, hypothecate, sell, or transfer, voluntarily or involuntarily, any Cyco, Inc. stock unless the transaction is consented to by a majority of the then authorized, issued and outstanding stock. This restriction is duly and conspicuously noted on the reverse side of the stock certificates.

Last year, Andrew pledged his stock to Bank as collateral for a personal loan. Andrew executed a pledge agreement, and delivered his share certificates to Bank. Andrew did not notify Cyco, Inc. of the pledge of his shares, and did not secure the consent of the majority of the other shares then authorized, issued and outstanding. Andrew defaulted on his personal loan. Bank properly foreclosed, and, per the pledge agreement, became the owner of Andrew's shares. Bank did not notify Cyco, Inc. of the change in ownership of Andrew's shares.

Cyco, Inc. held its annual meeting on March 25th. The record date for the meeting was 20 days before the meeting as permitted by applicable law. Cyco, Inc. gave proper notice of the meeting to Andrew, Barbara, Carol, David and Earl, the shareholders reflected on the corporate books as of the record date.

Barbara and Carol attended the annual meeting. A representative of Bank attended the annual meeting. Bank produced evidence of the foreclosure of Andrew's pledged stock. Earl did not attend the annual meeting. Frank attended the annual meeting. Frank handed the corporate secretary a proxy signed by David and dated the day before the meeting, authorizing Frank to vote David's shares at the meeting.

The chair declared that a quorum was present. The chair declared that Barbara, Carol and Frank were entitled to vote. The chair declared Bank was not entitled to vote.

Other than as expressly herein noted, there are no provisions in the Articles of Incorporation or the Bylaws of Cyco, Inc. that are relevant to the following questions:

1. Is the stock transfer restriction enforceable against Andrew? Against Bank?
2. Assuming Bank is the lawful owner of Andrew's shares, was Bank entitled to vote at the annual meeting? If not, what could Bank have done to acquire the right to vote?
3. Was there a quorum present for shareholder action at the annual meeting?

Question 5
February 2002 Bar Examination
(Replaces MEE Question 5 - Use MEE #5 Answer Booklet)

1. Gayle Grantor owns a small farm in Bootheel County, Missouri. She conveys this property to her sister, Gerta Grantee, by Warranty Deed, reserving to herself a life estate in the property. The language in the granting clause of the deed states that the conveyance is to "my sister, Gerta Grantee, and the heirs of her body." Shortly after executing this Deed and delivering it to her sister, Gayle dies. She is survived by her son, Gary Grantor. Gerta Grantee has two adult children (Greg and Gaylord) and five grandchildren. At the time of this conveyance, Gayle owned the farm in fee simple absolute.

- (A) What interest in the farm is owned by Gerta Grantee immediately after Gayle's death? Why?
- (B) What interest, if any, does Gayle's son, Gary Grantor, have in the farm immediately after his mother's death? Why?
- (C) What interest, if any, do Gerta's children and grandchildren have in the farm immediately after Gayle's death? Why?

2. Todd Testator owned a large house in Bootheel, Missouri. He provided in his Last Will and Testament that this property was devised to "my son, Tom, for his life, then to my daughter, Tess, for her life, then to my son Terry for his life, remainder to the surviving issue of my son Tom". At Todd's death, two of the three children named in Todd's Will were living, and Todd's son Tom had one living daughter, Tina. Tess, Todd's daughter, had predeceased her father. Tess was survived by her daughter, Tricia.

- (A) Assume that Todd's son Tom survived his father by five years. At Tom's death, who is entitled to possession of the house? Why?
- (B) Assume that Tom's daughter, Tina, who was alive at the time of her grandfather Todd's death, predeceases Tom without ever having had any children. Who will be entitled to possession of the house following the death of all the life-tenants named in Tom's Will? Why?

3. Owen Owner devises a restaurant building, also located in Bootheel, Missouri, to his cousin, Otto, by his Will. The language in the Will states: "to my cousin, Otto, but if alcoholic beverages are ever served on the premises, then in that event, I devise [the restaurant building] to the heirs of my niece, Ophelia."

- (A) What interest, if any, do Ophelia and her heirs have in the restaurant building? Why?
- (B) Assume that Otto continued to use the restaurant building after his uncle's death for the remainder of his life, as a restaurant. He left the property, in his Will, to his son in fee simple absolute, and, in turn, the son continued both the tradition of running an alcohol-free restaurant on this property and leaving it by Will to his only child, Oprah. Fifty-five years have passed since Otto's death, and Oprah wants to sell beer and wine in her restaurant. Can she do so without risk of losing the property? Why?